

Assembly Bill No. 2596

CHAPTER 1146

An act to amend Sections 1164, 1164.3, and 1164.11 of, and to add Sections 1164.12 and 1164.14 to, the Labor Code, relating to agricultural labor relations.

[Approved by Governor September 30, 2002. Filed
with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2596, Wesson. Agricultural labor mediation procedures.

SB 1156 of the 2001–02 Regular Session would provide a mediation procedure applicable to specified agricultural employers and a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees. It would permit either party to file with the Agricultural Labor Relations Board, at any time following 90 days after certification of the labor organization, a declaration that the parties have failed to reach a collective bargaining agreement and a request for an order directing the parties to mandatory mediation and conciliation of their issues.

This bill would permit the filing of a declaration with the board at any time following 90 days after a renewed demand to bargain by an agricultural employer or a labor organization certified prior to January 1, 2003, or 180 days after an initial request to bargain by an agricultural employer or a labor organization certified after January 1, 2003.

SB 1156 would permit either party to file with the board, following a specified period of mediation and conciliation, a petition for review of a report issued by a mediator selected by the parties that determines all issues not resolved by the parties. It provides a procedure whereby the board may grant a review of the mediator's report, order the provisions that are not the subject of the petition into effect, and order an additional mediation period on the controverted items, among other things.

SB 1156 would apply the mediation and conciliation procedures of the bill to all election certifications issued by the board before or after the effective date of the bill.

This bill would permit the filing of a demand with the board for mediation of issues only for cases that meet specified criteria.

SB 1156 would not permit a party to file with the board more than a specified number of declarations per calendar year, as specified.

This bill would not permit a party to file with the board more than 75 declarations with the board.

This bill would provide that the mediation procedures added by SB 1156 shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends that date.

The people of the State of California do enact as follows:

SECTION 1. Section 1164 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, is amended to read:

1164. (a) An agricultural employer or a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees may file with the board, at any time following (1) 90 days after a renewed demand to bargain by an agricultural employer or a labor organization certified prior to January 1, 2003, which meets the conditions specified in Section 1164.11 or (2) 180 days after an initial request to bargain by an agricultural employer or a labor organization certified after January 1, 2003, a declaration that the parties have failed to reach a collective bargaining agreement and a request that the board issue an order directing the parties to mandatory mediation and conciliation of their issues. “Agricultural employer,” for purposes of this chapter, means an agricultural employer, as defined in subdivision (c) of Section 1140.4, who has employed or engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of a declaration pursuant to this subdivision.

(b) Upon receipt of a declaration pursuant to subdivision (a), the board shall immediately issue an order directing the parties to mandatory mediation and conciliation of their issues. The board shall request from the California State Mediation and Conciliation Service a list of nine mediators who have experience in labor mediation. The California State Mediation and Conciliation Service may include names chosen from its own mediators, or from a list of names supplied by the American Arbitration Association or the Federal Mediation Service. The parties shall select a mediator from the list within seven days of receipt of the list. If the parties cannot agree on a mediator, they shall strike names from the list until a mediator is chosen by process of elimination. If a party refuses to participate in selecting a mediator, the other party may choose a mediator from the list. The costs of mediation and conciliation shall be borne equally by the parties.

(c) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of 30 days. Upon expiration of the 30-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has



been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period for an additional 30 days.

(d) Within 21 days, the mediator shall file a report with the board that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

SEC. 2. Section 1164.3 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, is amended to read:

1164.3. (a) Either party, within seven days of the filing of the report by the mediator, may petition the board for review of the report. The petitioning party shall, in the petition, specify the particular provisions of the mediator's report for which it is seeking review by the board and shall specify the specific grounds authorizing review by the board. The board, within 10 days of receipt of a petition, may accept for review those portions of the petition for which a prima facie case has been established that (1) a provision of the collective bargaining agreement set forth in the mediator's report is unrelated to wages, hours, or other conditions of employment within the meaning of Section 1155.2, or (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact.

(b) If it finds grounds exist to grant review within the meaning of subdivision (a), the board shall order the provisions of the report that are not the subject of the petition for review into effect as a final order of the board. If the board does not accept a petition for review or no petition for review is filed, then the mediator's report shall become a final order of the board.

(c) The board shall issue a decision concerning the petition and if it determines that a provision of the collective bargaining agreement contained in the mediator's report violates the provisions of subdivision (a), it shall, within 21 days, issue an order requiring the mediator to modify the terms of the collective bargaining agreement. The mediator shall meet with the parties for additional mediation for a period not to exceed 30 days. At the expiration of this mediation period, the mediator shall prepare a second report resolving any outstanding issues. The second report shall be filed with the board.

(d) Either party, within seven days of the filing of the mediator's second report, may petition the board for a review of the mediator's second report pursuant to the procedures specified in subdivision (a). If no petition is filed, the mediator's report shall take immediate effect as



a final order of the board. If a petition is filed, the board shall issue an order confirming the mediator's report and order it into immediate effect, unless it finds that the report is subject to review for any of the grounds specified in subdivision (a), in which case the board shall determine the issues and shall issue a final order of the board.

(e) Either party, within seven days of the filing of the report by the mediator, may petition the board to set aside the report if a prima facie case is established that any of the following have occurred: (1) the mediator's report was procured by corruption, fraud, or other undue means, (2) there was corruption in the mediator, or (3) the rights of the petitioning party were substantially prejudiced by the misconduct of the mediator. For the sole purpose of interpreting the terms of paragraphs (1), (2), and (3), case law that interprets similar terms used in Section 1286.2 of the Code of Civil Procedure shall apply. If the board finds that any of these grounds exist, the board shall within 10 days vacate the report of the mediator and shall order the selection and appointment of a new mediator, and an additional mediation period of 30 days, pursuant to Section 1164.

(f) Within 60 days after the order of the board takes effect, either party or the board may file an action to enforce the order of the board, in the superior court for the County of Sacramento or in the county where either party's principal place of business is located. No final order of the board shall be stayed during any appeal under this section, unless the court finds that (1) the appellant will be irreparably harmed by the implementation of the board's order, and (2) the appellant has demonstrated a likelihood of success on appeal.

SEC. 3. Section 1164.11 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, is amended to read:

1164.11. A demand made pursuant to paragraph (1) of subdivision (a) of Section 1164 may be made only in cases which meet all of the following criteria: (a) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (b) the employer has committed an unfair labor practice, and (c) the parties have not previously had a binding contract between them.

SEC. 4. Section 1164.12 is added to the Labor Code, immediately following Section 1164.11 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, to read:

1164.12. To ensure an orderly implementation of the mediation process ordered by this chapter, a party may not file a total of more than 75 declarations with the board. In calculating the number of declarations so filed, the identity of the other party with respect to whom the declaration is filed, shall be irrelevant.



SEC. 5. Section 1164.14 is added to the Labor Code, immediately following Section 1164.13 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, to read:

1164.14. This chapter shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 6. This act shall become operative only if this bill and Senate Bill No. 1156 is enacted and becomes effective on or before January 1, 2003.

